

part, the deputy commissioner's recommendation, stating the reasons for such rejection. If no reply is received within 30 days from the date on which the recommendation was sent to parties, the recommendation shall be deemed accepted.

**§ 725.418 Proposed decision and order.**

(a) A proposed decision and order is a document, issued by the deputy commissioner after the evidentiary development of the claim is completed and all contested issues, if any, are joined, which purports to resolve a claim on the basis of the evidence submitted to or obtained by the deputy commissioner. A proposed decision and order shall be considered a final adjudication of a claim only as provided in § 725.419. A proposed decision and order may be issued by the deputy commissioner in any claim and at any time during the adjudication of a claim if:

(1) Issuance is authorized or required by this part; or,

(2) The deputy commissioner determines that its issuance will expedite the adjudication of the claim.

(b) A proposed decision and order shall contain findings of fact and conclusions of law and an appropriate order shall be served on all parties to the claim.

**§ 725.419 Response to proposed decision and order.**

(a) Within 30 days after the date of issuance of a proposed decision and order, any party may, in writing, request a revision of the proposed decision and order or a hearing. If a hearing is requested, the deputy commissioner shall refer the claim to the Office of Administrative Law Judges (see § 725.421).

(b) Any response made by a party to a proposed decision and order shall specify the findings and conclusions with which the responding party disagrees, and shall be served on the deputy commissioner and all other parties to the claim.

(c) If a timely request for revision of a proposed decision and order is made, the deputy commissioner may amend the proposed decision and order, as circumstances require, and serve the revised proposed decision and order on all

parties or take such other action as is appropriate. If a revised proposed decision and order is issued, each party to the claim shall have 30 days from the date of issuance of that revised proposed decision and order within which to request a hearing.

(d) If no response to a proposed decision and order is sent to the deputy commissioner within the period described in paragraph (a) of this section, or if no response to a revised proposed decision and order is sent to the deputy commissioner within the period described in paragraph (c) of this section, the proposed decision and order shall become a final decision and order, which is effective upon the expiration of the applicable 30-day period. Once a proposed decision and order or revised proposed decision and order becomes final and effective, all rights to further proceedings with respect to the claim shall be considered waived, except as provided in § 725.310.

**§ 725.420 Initial determinations.**

(a) Section 9501(d)(1)(A)(i) of the Internal Revenue Code provides that the Black Lung Disability Trust Fund shall begin the payment of benefits on behalf of an operator in any case in which the operator liable for such payments "has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary \* \* \*." For claims filed on or after January 1, 1982, the payment of such interim benefits from the Fund is limited to "benefits accruing after the date of such initial determination \* \* \*."

(b) Except as provided in § 725.415 of this subpart, after the deputy commissioner has determined that a claimant is eligible for benefits, on the basis of all evidence submitted by a claimant and operator, and has determined that a hearing will be necessary to resolve the claim, the deputy commissioner shall in writing so inform the parties and direct the operator to begin the payment of benefits to the claimant in accordance with § 725.522. The date on which this writing is sent to the parties shall be considered the date of initial determination of the claim.

(c) If a notified operator refuses to commence payment of a claim within

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30 days from the date on which an initial determination is made under this section, benefits shall be paid by the fund to the claimant in accordance with § 725.522, and the operator shall be liable to the fund, if such operator is determined liable for the claim, for all benefits paid by the fund on behalf of such operator, and, in addition, such penalties and interest as are appropriate.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24292, May 31, 1983]

### § 725.421 Referral of a claim to the Office of Administrative Law Judges.

(a) In any claim for which a formal hearing is requested or ordered, and with respect to which the deputy commissioner has completed development and adjudication without having resolved all contested issues in the claim, the deputy commissioner shall refer the claim to the Office of Administrative Law Judges for a hearing. If the deputy commissioner with jurisdiction over the claim is located at any place outside Washington, DC, such deputy commissioner shall forward a claim with respect to which a hearing is required by this part to the DCMWC in Washington, DC, which shall refer the claim to the Office of Administrative Law Judges for appropriate proceedings.

(b) In any case referred to the Office of Administrative Law Judges under this section, the deputy commissioner shall transmit to that office the following documents, which shall be placed in the record at the hearing subject to the objection of any party:

(1) Copies of the claim form or forms; (2) any statement, document, or pleading submitted by a party to the claim; (3) a copy of the notification to an operator of its possible liability for the claim; (4) all evidence submitted to the deputy commissioner under this part; (5) any written stipulation of law or fact or stipulation of contested and uncontested issues entered into by the parties; (6) any pertinent forms submitted to the deputy commissioner; (7) the statement by the deputy commissioner of contested and uncontested issues in the claim; and (8) the deputy commissioner's initial determination of eligibility or other documents nec-

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essary to establish the right of the fund to reimbursement, if appropriate. Copies of the transmittal notice shall also be sent to all parties to the claim.

(c) A party may at any time request and obtain from the deputy commissioner copies of documents transmitted to the Office of Administrative Law Judges under paragraph (b) of this section. If the party has previously been provided with such documents, additional copies may be sent to the party upon the payment of a copying fee to be determined by the deputy commissioner.

[43 FR 36772, Aug. 18, 1978, as amended at 48 FR 24292, May 31, 1983]

### § 725.422 Legal assistance.

The Secretary or his or her designee may, upon request, provide a claimant with legal assistance in processing a claim under the Act. Such assistance may be made available to a claimant in the discretion of the Solicitor of Labor or his or her designee at any time prior to or during the time in which the claim is being adjudicated and shall be furnished without charge to the claimant. Representation of a claimant in adjudicatory proceedings shall not be provided by the Department of Labor unless it is determined by the Solicitor of Labor that such representation is in the best interests of the black lung benefits program. In no event shall representation be provided to a claimant in a claim with respect to which the claimant's interests are adverse to those of the Secretary of Labor or the fund.

## Subpart E—Hearings

### § 725.450 Right to a hearing.

Any party to a claim (see § 725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the deputy commissioner. There shall be no right to a hearing until the processing and adjudication of the claim by the deputy commissioner has been completed. There shall be no right to a hearing in a claim with respect to which a determination of the claim made by the deputy commissioner has become final and effective in accordance with this part.